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BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 608 /2002 (S.B.)

PETITIONER/ APPLICANT - Parmanand Das, aged about 45 years, S/o. Lingdraj Das, Helper, W-3 P.No.42508, Hindusthan Steel Works Construction Ltd, Bhilai, R/o. Block No.21, Road, No.-37, Sector-7 (HSCL Sector), Bhilai-nagar, District Durg (C.G.)

P.R. No. 608/02
Presented by Shri Chhabra Advocate
dt. 9.10.02

V/s.

Respondents/ NON APPLICANTS - 1. Hindusthan Steel Works Construction Limited, Through : Group General Manager, Bhilai, P.O. Bhilai, District Durg, (C.G.).

Respondents : - 2. Industrial Court, Shankar Nagar, P.O.& District Raipur.

3. Labour Court, Utai Road, P.O. & District Durg (C.G.).

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF CERTIORARI AND MANDAMUS AND ANY OTHER WRIT/DIRECTION/ORDER:

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.608 OF 2002

Parmanand Das

versus

Hindustan Steel Works Construction Limited and others

ORDER

Post for 4-9-2006

Sd/-
Satish K. Agnihotri
Judge
2-9-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.608 OF 2002

Petitioner : Parmanand Das

versus

Respondents : Hindustan Steel Works Construction Limited and others

Present : Ms. Meera Jaiswal, counsel for the petitioner.
Mr. P.S.Koshy, counsel for respondent No.1.

ORDER

(Passed on 4th of September, 2006)

The petitioner was removed from service by order dated 21-3-1987 (Annexure P-1) while working as Helper-W-3 with respondent No.1 - Construction Company by the General Manager of respondent No.1 - Construction Company.

2. Being aggrieved, the petitioner moved the Labour Court and the Labour Court, by award dated 22-4-1998 (Annexure P-2), allowed the application of the petitioner and found that the

charge of misconduct alleged against the petitioner was not proved. The petitioner was accordingly reinstated in service without back wages. The Labour Court did not assign any reason for not granting back wages, which, in normal circumstances, is a natural consequence of reinstatement in service.

3. The Industrial Court, in appeal, by its common order dated 23-11-2001 (Annexure P-3), dismissed the appeal No.138/M.P.I.R.Act/98 filed by the petitioner against denial of grant of back wages and also the appeal No.134/M.P.I.R.Act/98 filed by respondent No.1 - Construction Company against the order of reinstatement. The Industrial Court, while agreeing with the finding of the Labour Court, recorded that the charge alleged against the petitioner was of theft and the Labour Court was right in not granting back wages keeping in view that the petitioner was allegedly charged for theft of the goods of respondent No.1 - Construction Company.

4. The Labour Court has not examined any aspect of the case. The Labour Court further did not examine as to whether the petitioner was gainfully employed elsewhere and the application of the petitioner impugning the order of termination was allowed not on the ground of any technicality but on the clear finding recorded by the Labour Court that the charge of theft alleged against the

petitioner was not proved. Thus, the charge of misconduct was accordingly not proved.

5. The Industrial Court has also not examined any other aspect while declining grant of back wages to the petitioner.

6. I have heard learned counsel for the parties and perused the record of the case.

7. It is true that the petitioner remained out of the job for 11 years. However, striking balance between the interest of the employer as well as that of the employee, grant of full back wages would not be appropriate in the facts of the present case. However, in view of the observations made by the Supreme Court in *Allahabad Jal Sansthan vs. Daya Shankar Rai and another*[1] and in *P.G.I. of Medical Education & Research, Chandigarh vs. Raj Kumar*[2], the interest of justice would be served if the petitioner is paid 50% of the back wages from the date of termination till the date of reinstatement of his services.

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1 2005 AIR SCW 2646

2 (2001) 2 SCC 54

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8. The petition is accordingly allowed. The petitioner is entitled to grant of 50% of the back wages as stated above. No order as to costs.

Certified copy as per rules.

Sd/-
Satish K. Agnihotri
Judge
4-9-2006

Gopal